

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-997

WALTER SPEAR V. BANGOR
HYDRO-ELECTRIC COMPANY
APPEAL OF CONSUMER ASSISTANCE
DIVISION DECISION #1996-3964

February 2, 1999

ORDER ON APPEAL

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

This matter involves an appeal by Walter Spear of a dispute with Bangor Hydro-Electric Company (BHE) over Mr. Spear's request for an adjustment of the amount billed for electric service prior to his notification to BHE that the nature of his service should be changed from general to residential. The Consumer Assistance Division (CAD) concluded that BHE was not required to adjust past bills for the period prior to Mr. Spear's notification of the change in the nature of his service. We affirm the CAD decision and therefore dismiss Mr. Spear's appeal.

II. BACKGROUND & DECISION

The relevant facts are as follows:

1) In 1989, Mr. Spear began receiving service at the location at issue, a woodworking mill, under the account of a former tenant.¹

2) Mr. Spear initially used the location for business purposes and did not begin living there until the fall of 1992;

3) BHE provided service to Mr. Spear at the general service rate from 1989 until October 1996;

4) In October of 1996, Mr. Spear realized that the residential service rate was lower than the general service rate and notified BHE that since 1992 he had been residing at the property for which he received electric service; and

5) BHE adjusted Mr. Spear's bill for the period of one year prior to Mr. Spear's notification of his residency at the mill to

¹Mr. Spear continued paying under the name of the former tenant because BHE required a deposit when Mr. Spear sought to change the name on the account in 1989 from the former tenant's name to his own name.

reflect the difference between the residential and the general service rates.

The essence of Mr. Spear's complaint is that BHE should be responsible for the difference between the general and residential service rates during the period from the start of his residency at the location until the date of his notification to BHE that he should receive service under the residential rate. He states, "Had I thought there was any 'change in the nature of service' which would have made a difference to either party in 1992 when I began my residency here, I would have notified BHE of that change."

As clarified in the letter dated December 23, 1998 from the CAD Complaint Supervisor to Mr. Spear, the CAD found that Mr. Spear had a duty to notify BHE of any changes in the nature of service. The CAD decided, therefore, that BHE was not required to credit Mr. Spear with the difference between the amount Mr. Spear paid under the general service rate from 1992 until 1996 and the rate that he would have paid during that period if he were charged under the residential service rate.

We agree with the CAD that BHE should not be held responsible for Mr. Spear's failure to notify the Company of a change in his use of the mill. Mr. Spear represents that when he began taking service under the former tenant's account in 1989, he used the mill for the purpose of running a woodworking business and that he began residing in the mill in the fall of 1992. Had Mr. Spear notified BHE of the change in the nature of his service *at the time of the change* in 1992, BHE could have then determined whether Mr. Spear's use of the mill was primarily residential.² BHE's Commission-approved terms and conditions, in fact, require that "[t]he Customer shall give proper notice to the Company of any substantial increase or decrease in, *or change of purpose of location* proposed in his installation." BHE Term and Condition § 8-E (emphasis added). Thus, the CAD correctly found that it was Mr. Spear's duty to notify BHE of the change in his use of the mill.

We further conclude that BHE acted reasonably in adjusting Mr. Spear's bill for the period of one year prior to his notification of his changed use of the mill. Because it was Mr.

² BHE's terms and conditions provide that "Whenever in any private residence or individual apartment electricity is used for commercial as well as domestic purposes, then only in case the electricity used for commercial purposes is less than 20% of total use, will the residence service be available for all electricity consumed." BHE Terms and Conditions § 1-A.

Spear's duty to provide notice of the change in service, we will not require BHE to either (1) rebate the entire difference between the residential and general service rate for the three year period between 1992 and 1995 or (2) try to determine whether Mr. Spear should have paid a combination of residential and commercial rates (depending on how much he used the mill for business purposes) during that 3-year period.

Finally we reject the claim that BHE's willingness to make the 1-year adjustment is evidence that BHE erred in billing Mr. Spear at the general service rate for the period from 1992 to 1996. Rather, we view BHE's adjustment as a reasonable effort to address a situation that arose through no fault of its own.

For the reasons stated above, we affirm the CAD's decision, as clarified, and therefore dismiss Mr. Spear's appeal.

Dated at Augusta, Maine, this 2nd day of February, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which a reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:

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